



12 months' prior

- 1) At the start of this year, following correspondence from Flat Justice, the Tribunal agreed to the correction of the form RRO1 used for making Rent Repayment Order (RRO) applications. The error on the old RRO1 form involved exactly the same error that is made here at 8. in the decision. The correspondence regarding this correction is attached and the resulting correction is illustrated below by this extract from the form (the strikethrough text has now been removed from RRO1):

IMPORTANT NOTE: The application must be made not later than 12 months after the date of the alleged offence. The Tribunal is not permitted to order payment of any amount in respect of any time falling outside the period of 12 months ending with the date of this application.

A fee is payable for this application (see section 10 for Help with Fees).

- 2) S41 of The Housing and Planning Act 2016 (HaPA) is under the section titled "*Application for a rent repayment order*" and the limitation it refers to is the limitation for a RRO application under the Act, not the amount of an award. It is a 'statute of limitation' for the application.
- 3) Under s41(2)(b) Applicants are limited to making a RRO application within 12 months of the offence having been committed. In a licensing offence, such as this, it means that the Applicant must submit their RRO1 within 12 months of the property being unlicensed during their occupancy. It does not, however, limit any award amount.
- 4) For the assessment of an award the part of HaPA 2016 titled "*Making of rent repayment order*" is relevant. Here, s44 "**Amount of order: tenants**" is the section that is relevant for the calculation of an award for a tenant Applicant. s44(2) limits the award for an RRO for this offence for tenant Applicants to 12 months of rent paid during the offence:
- 5) "a period, not exceeding 12 months, during which the landlord was committing the offence".
- 6) However, this may be any period during which the offence was taking place and during which rent was paid. It is not limited in any way by the date of application, as it previously was under HA 2004.

B. deduction of landlord's costs

- 7) The HaPA 2016 changes who can make a RRO application, under what circumstances and for what range of offences. Importantly, it also changes how the amount of any

award is to be assessed by the First-tier Tribunal Property Chamber (Residential Property) (FtT).

- 8) The reasoning behind the 2016 legislation has been made clear by the Government and is well known. *Pepper v Hart* (1992) requires regard to this where there is any ambiguity; however, there has been little ambiguity in the language of the Government guidance.
- 9) The Foreword of “Rent repayment orders under the Housing and Planning Act 2016- Guidance for Local Housing Authorities” (2017 ISBN: 978-1-4098-5038-0) makes the reasoning amply clear:

When extended rent repayment orders were introduced through the Housing and Planning Act 2016, Ministers made clear that they expected this power to be used robustly as a way of clamping down on rogue landlords. In the House of Commons, Brandon Lewis MP

a small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords and disrupt their business model.

- 10) The First-tier Tribunal will have regard to this guidance (1.3 p.8 of the guidance quoted above).
- 11) The most widely quoted UT guidance from HA 2004 cases is *Parker v Waller* (2012), where the landlord successfully appealed a decision by the FtT to award 100% of the rent to the Applicants. Much of the deliberation in this decision centred on what the purpose of RROs might be (§20 to 26). However, for the HaPA 2016, the purpose of RROs has been made much clearer: RRO awards should punish criminal landlords and act as a severe deterrence, hence the inclusion of offences other than licensing. RROs under HaPA 2016 can no longer simply be viewed as a way of returning illegal rental profits and such profits no longer need to be calculated.
- 12) In assessing the amount of the award, the UT guidance (above) relied heavily on the wording at s74 (5) of the HA 2004: that the amount should be “reasonable in the circumstances”. This part of the legislation is replaced by the HaPA 2016 and this wording no longer occurs. No guidance based on this wording should, therefore, be used in assessing awards made for RRO cases brought under HaPA 2016.
- 13) As a consequence, there should not be an assessment of “reasonable” deductions from a RRO award. At 13 (d) in the *Parker v Waller* decision, George Bartlett, QC (President) commented that the HA 2004 does not distinguish between rent that included other charges (such as utilities) and more ‘pure’ rental payments. In the HaPA 2016 there is also no such distinction. We argue that the FtT has no statutory discretion, under HaPA2016, to reduce an award for a RRO by deducting the

landlord's costs. Therefore, the FtT does not, as a matter of course, have to deliberate on landlords' expenses claims or calculate any rental 'profit' as a basis for an award. From the HaPA 2016, the basis award should always be 100% of the rent paid before any other considerations, under that Act, are weighed.

- 14) This is also much fairer: all properties have standing charges on them, such as utility payments, council tax or mortgage payments, that would occur whether the property were occupied or not. Additionally, it should be noted that mortgage interest allowance is being phased out for the majority of landlords: if HMRC doesn't allow law-abiding landlords to set mortgage payments against rent, why should the FtT do so for criminal landlords?
- 15) Our contention that 100% of the rent paid should be the basis of the award is also supported by the fact that the award calculation covered in the HaPA 2016 section "*Making of rent repayment order*" is now essentially identical for tenants (s44) and Local Authorities (LAs) (s45). However, under HA 2004, awards for LAs were calculated on the basis of 100% of the Housing Benefit paid. s74(2): "[the Tribunal] must make a rent repayment order...equal to the total amount of housing benefit paid", whereas tenant awards, in contrast, were allowed to be "reasonable in the circumstances". As awards to LAs normally continue to be based on 100% of the Housing Benefit/UC paid under HaPA 2016, awards for tenants should also be based on 100% of their periodical payments.